

5.1. AMENDMENTS TO THE PLANNING ACT 2016, THE PLANNING AND ENVIRONMENT COURT ACT 2016 AND THE PLANNING REGULATION 2017

REPORT AUTHOR(S)	Jenny Elphinstone, Senior Planning Officer
MANAGER	Paul Hoye, Manager Environment and Planning
DEPARTMENT	Environment and Planning
PROPOSAL	Proposed Amendments to the <i>Planning Act 2016</i> , the <i>Planning and Environment Court Act 2016</i> and the <i>Planning Regulation 2017</i> .

RECOMMENDATION

That Council officers prepare and lodge a submission in response to the *Economic Development and Other Legislation Amendment Bill 2018* raising concern with the proposed website reporting and secondly seeking further consideration and assistance from the State Government with the issue of gap funding between actual cost and maximum charging for infrastructure development in regional areas.

EXECUTIVE SUMMARY

The *Economic Development and Other Legislation Amendment Bill 2018* proposes to amend a number of Acts. This report focusses only on the proposed changes that relate to planning matters relevant to the Douglas Shire community. Comments in relation to the Bill are required to be submitted by Friday 22 February 2019. The proposed amendments to the *Planning Regulation 2017* seek to improve the transparency of the collected infrastructure charges and the expenditure of the infrastructure contributions. While the Bill is available to view, there is no publication of the particular wording for the proposed amendments to the subordinate legislation, the *Planning Regulation 2017*. No concern is raised with the majority of changes to the planning legislation, however concern is held with the proposed obligations for online reporting of the Local Government Infrastructure Plan (LGIP) and concern remains with the gap between the respective cost of developing land and the maximum charge Council is able to apply.

WEBSITE REPORTING OF INFRASTRUCTURE CHARGING

The amendments seek greater transparency of local government infrastructure charging and decision making to, “provide for and contribute to an efficient, effective, transparent, integrated, a coordinated and accountable system of land use planning and development assessments in Queensland.” These changes include a requirement to create a register that enables users to search and extract data, identifies local infrastructure items that the levied infrastructure charges contributes towards (as listed in an LGIP and/or infrastructure agreement), incorporate the reference number for each Notice issued and to include the

suburb where the relevant land is situated. The amendments will also require Council to include annual reporting on LGIP revenue (based on infrastructure charges) and capital expenditure forecasts and actual infrastructure charges revenue and expenditure.

No specific detail has been provided for the changes to the *Planning Regulation 2017*. Through consultation with Council's officers, the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) has outlined the intent of the proposed changes. The DSDMIP has indicated that once the amendments to the subordinate legislation have been passed, the Department will assist local government with implementation.

Officer Comment

Concern is raised with the proposed website reporting. A significant amount of financial assets and officer time has been spent over many years by Council, the Cairns Regional Council (during the time of amalgamation) and the former Douglas Shire Council in developing the current Local Government Infrastructure Plan (LGIP). Given the previous restricted timelines for producing an "approved" LGIP a review of the adopted LGIP is necessary. The process of the LGIP adoption includes an external peer review, two State Government reviews, a public consultation process and a formal request to Minister for a Planning scheme amendment. In addition, under the Local Government Act 2009 Council's financial expenditure is subject to appropriate financial planning and reporting, publicly released budgets and stringent internal and external audits. Council has structured processes in place for these matters.

The development industry fully understands that contributions are required when infrastructure is needed to compliment development in a timely manner. In some instances, Council's infrastructure is provided through a private agreement as the development area is within an Integrated Resort Development Scheme. Where a developer considers an inappropriate charge has been levied or an infrastructure agreement has not been satisfactorily achieved there are appropriate appeal mechanisms through the *Planning Act 2016* and the *Planning and Environment Court Act 2016*.

The LGIP is a high level asset planning and management tool that identifies projected needs for a ten year period and identifies future development planning to match those needs. Being part of the Planning Scheme an LGIP is a strategic tool that has a statutory framework and standing. Practically, the LGIP remains as a tool and given its nature of incorporation into the Statutory Planning Scheme it cannot be as flexible or responsive in all circumstances, for example when disasters may result in short term infrastructure planning changes.

In respect to the above, the proposed amendments to place a higher transparency and website reporting of local government infrastructure register is considered unnecessary and excessive, particularly for small Councils where a limited number of infrastructure charges notices will be issued per year. It is highly unlikely that the proposed reporting will give further benefit to the community. The existing process, where an Infrastructure Charges Notice as associated with a development approval (that is attached with the decision notice for each approval) is sufficient.

Of greater concern is the capping of maximum infrastructure charges that is set at a particular level, regardless of the locality and respective cost of development in that locality. The difference between the actual cost of providing infrastructure and the maximum charge Council can apply must be funded by Council and without appropriate financial assistance this constraint limits the ability for Council to attract and provide for development in regional areas.

INFRASTRUCTURE CHARGING

Through a recent Planning and Environment Court appeal (Southern Queensland Council) it was identified that there was a lack of detail included in an issued Infrastructure Charges Notice to the extent the Notices were found to be invalid. Given this issue may affect all local governments and all issued Infrastructure Charges Notices, the Bill seeks retrospective legislation to deem the Notices to have been issued correctly.

Officer Comment

No concern is raised with the proposed clarification of information and advice that is to be included on an Infrastructure Charges Notice to ensure the Notice complies with the intended requirements of the *Planning Act 2016* and the subordinate legislation the *Planning Regulation 2017*. That is a Notice reflects the respective approval and gives sufficient detail as to how and what charge is applied. The retrospective nature of the legislation ensures certainty for the community that at least part of the funding required for infrastructure is provided by developers.

SUBMITTER APPEAL CHANGES

The amendments to the Planning Act 2016 also seek to remove the requirement for a submitter appellant to service a copy of their appeal on all other submitters. The amendment does not remove the right for a submitter to initiate an appeal. The change is supported by increased communication about appeals on the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) website where a copy of all appeals will be listed. The appellant must serve a copy of the notice of appeal to the Chief Executive of the DSDMIP who in turn will publish the notice on the DSDMIP website. The Department will also consider other methods to ensure submitters are aware of the appeal information. The changes aim to provide a reliable and accessible way of submitters to be informed about appeal proceedings as an alternative to the current approach of a submitter-appellant serving every submitter with a copy of the appeal.

Officer Comment

No concern is raised with these amendments. While all residents may not have personal access to the internet, access is available at the Council's library and at the Port Douglas the hub.

PLANNING AND ENVIRONMENT COURT ACT 2016 AMENDMENTS

The amendments allow the Court to refer matters to a private mediator. The amendments respond to a request from the court to achieve operational efficiencies for dispute resolution arrangements. There is no change to the current situation of a mediation agreement

returning to the Council for resolution and returning to the Court for inclusion in a Court Order or Judgement.

Officer Comment

No concern is raised with these amendments.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* Council is responsible for the local planning instrument, the Douglas Shire Planning Scheme which includes the Local Government Infrastructure Plan.

ATTACHMENTS

Nil